

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

NESPRESSO USA, INC.,)
)
Plaintiff,)
)
v.)
) C.A. No. 16-194 (CFC)
ETHICAL COFFEE COMPANY SA,)
)
Defendant.)
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ETHICAL COFFEE COMPANY SA and)
ETHICAL COFFEE CORPORATION,)
)
Counterclaim Plaintiffs,)
)
v.)
)
NESPRESSO USA, INC. and)
NESTLÉ NESPRESSO SA,)
)
Counterclaim Defendants.)

PROPOSED JUDGMENT

WHEREAS, on September 4, 2019, the Court granted Hagens Berman Sobol Shapiro LLP and Farnan LLP's unopposed motion to withdraw as counsel for Defendant-Counterclaim Plaintiffs Ethical Coffee Company SA and Ethical Coffee Corporation (collectively, "ECC"), and Ordered that ECC must retain counsel by November 4, 2019, or it "shall be considered a failure to defend and the court shall conduct a hearing at some time in the future to determine whether judgment (and in what amount) shall be entered against" ECC. (D.I. 206.)

WHEREAS, by November 4, 2019, ECC did not retain counsel.

WHEREAS, on November 6, 2019, the Special Administrator of ECC's Swiss bankruptcy proceeding wrote a letter to the Court indicating that ECC's creditors (i) did not request assignment of ECC's counterclaims in this action, (ii) did not request public sale of ECC's counterclaims in this action, and (iii) "abandoned" this action "without any further action required from the Special Administrator." (D.I. 209 at 1-2.)

WHEREAS, the Court conducted a telephonic conference on November 15, 2019, that was attended by counsel for Nestlé Nespresso SA and Nespresso USA, Inc. (collectively, "Nespresso") and ECC's Special Administrator, whereby Nespresso confirmed that it sought dismissal with prejudice pursuant to Fed. R. Civ. P. 41(b).

WHEREAS, Nespresso filed its Motion to Dismiss Pursuant to Fed. R. Civ. P. 41(b) on November 20, 2020. Having considered Nespresso's Motion to Dismiss and all the papers filed in support thereof, IT IS HEREBY ORDERED THAT Nespresso's Motion to Dismiss Pursuant to Fed. R. Civ. P. 41(b) is GRANTED in its entirety.

IT IS HEREBY ADJUDGED THAT

1. Final judgment is entered in favor of Nespresso, and against ECC, on ECC's antitrust counterclaims (Counts I, II and III of D.I. 112) and on ECC's patent infringement counterclaims (Counts I and II of D.I. 24).
2. All counterclaims asserted by ECC are DISMISSED WITH PREJUDICE.
3. Nespresso is the prevailing party in this action.
4. Nespresso is entitled to statutory costs.
5. This action is closed, no other claims or counterclaims remain.

IT IS SO ORDERED.

DATED: November 22, 2019


The Honorable Colm F. Connolly